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8 ANDREW COHEN AND JAMES LEWIS.

9 UNITED STATES DISTRICT COURT
10 NORTHERN DISTRICT OF CALIFORNIA

11 ANDREW COHEN, an individual; JAMES
12 LEWIS, an individual

13 Plaintiffs,

14 vs.

15 CITY AND COUNTY OF SAN FRANCISCO,
16 HEATHER FONG, an individual, and DOES
17 1-50

18 Defendants.

Case No.

COMPLAINT FOR:

1. RETALIATION Cal. Govt. Code §12940
2. RETALIATION - U.S.C. § 2000(e) et seq. (Title VII of the Civil Rights Act of 1964)
3. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

JURY TRIAL DEMANDED

INTRODUCTION

1. This is an action for damages for Retaliation and Intentional Infliction of Emotional Distress. This action arises out of events involving Plaintiffs ANDREW COHEN and JAMES LEWIS (hereinafter "Plaintiffs") and Defendant City and County of San Francisco (hereafter "Defendant" or "THE CITY"). Plaintiffs were employed as Peace Officers by the City and County of San Francisco in San Francisco. Therefore, jurisdiction is proper in San Francisco County.

THE PARTIES

2. James Lewis ("Lewis") is an individual employed by THE CITY as a Police Officer. THE CITY has employed LEWIS for twenty-four years. LEWIS has spent his career both as an Officer and as a Housing officer for the San Francisco Police.
3. Andrew Cohen ("Cohen") is an individual employed by THE CITY as a Police Officer. THE CITY has employed COHEN for eleven years. During this time, COHEN produced a variety of videos for the Police Department and THE CITY, including documentaries and other satirical videos. COHEN's superiors and peers encouraged his artistic abilities, noting that they were morale boosters for other officers.
4. Plaintiffs are informed and believe and thereon allege that THE CITY is a governmental entity.
5. Plaintiffs are informed and believe and thereon allege that defendant HEATHER FONG ("Fong") is an individual employed by THE CITY as Chief of Police.
6. Plaintiffs are ignorant of the true names and capacities of defendants sued herein as DOES 1-50, inclusive, and Plaintiffs therefore sue such defendants by such fictitious names. Plaintiffs will amend this Complaint to allege their true names and capacities when ascertained. Plaintiffs are informed and believe and thereon

1 allege that each of these fictitiously named defendants is responsible in some
2 manner for the occurrences, and that such aforementioned defendants' acts and
3 omissions proximately caused the Plaintiffs' injuries as alleged herein.

- 4 7. Plaintiffs are informed and believe and thereon allege that at all times mentioned
5 herein, each individual defendant was and is the agent, employee and servant of
6 THE CITY and committed the occurrences, acts and omissions complained of
7 herein while acting within the scope of such agency, employment and servitude.
8 Each defendant is responsible for the occurrences, acts and omissions of each
9 other defendant complained of herein.

10
11 **GENERAL ALLEGATIONS**

- 12 8. Plaintiffs incorporate by reference the factual allegations of paragraphs 1 through
13 7 above.
- 14 9. Plaintiffs herein are members of a group of Plaintiffs who filed an action against
15 Defendants CITY and FONG for *inter alia* racial discrimination and various civil
16 rights violations stemming from their participation in the creation of certain video
17 vignettes (the "VIDEOS"), entitled *Harmston, et. al. v. CCSF, et. al.*, United States
18 District Court for the Northern District of California, Case No. 3:07-cv-01186-SI
19 (the "*Harmston*" case).
- 20 10. As a direct result of Plaintiffs' active participation as Plaintiffs in the *Harmston*
21 litigation, including their participation in the deposition of Chief Heather Fong on
22 or about September 20, 2007, beginning in or about September 29, 2007, Plaintiffs
23 were retaliated against and were subjected to an extreme degree of scrutiny
24 including but not limited to being monitored by other officers in the performance
25 of their duties.
- 26 11. As a direct result of Plaintiffs' participation as Plaintiffs in the *Harmston* litigation,
27 including but not limited to their participation in the deposition of Chief Heather
28 Fong in the *Harmston* litigation on or about September 20, 2007, Plaintiffs were

1 subjected to an extreme degree of scrutiny by Defendants, who required that
2 Plaintiffs be monitored by other officers at all times in the performance of their
3 duties.

4 12. Plaintiffs have suffered further adverse employment actions for participating in the
5 *Harmston* litigation. The requirement imposed by Defendants of constant and
6 intrusive supervision and monitoring at all times has caused Plaintiffs' shifts to be
7 changed in order to accommodate the needs of the officers serving as monitors of
8 Plaintiffs' work.

9 13. The shift changes required by the monitoring officers' schedules has caused
10 extreme hardship upon Plaintiffs.

11 14. Plaintiffs are informed and believe and thereon allege that Defendants' intent in
12 subjecting Plaintiffs to extreme scrutiny, demeaning them in front of their peers
13 was done with knowledge and malicious intent.

14 15. Defendants have not followed Department General Orders, Policies and Practices,
15 and Statutes covering discipline and adverse employment actions in imposing the
16 extreme scrutiny and schedule manipulation that Plaintiffs are suffering under.

17 16. Plaintiffs have complained to their supervisors concerning the drastic conditions
18 of increased scrutiny and shift manipulation, but have been ignored.

19 17. Plaintiffs have been subjected to scorn and ridicule by virtue of having to be
20 supervised every moment they are on duty.

21 18. Plaintiffs work conditions have changed dramatically for the worse since their
22 participation in the *Harmston* litigation.

23 19. Plaintiffs are informed and believe and thereon allege that because of the acts of
24 FONG and THE CITY, they have suffered extreme humiliation and
25 embarrassment from being monitored in the fashion described above and having
26 their shifts changed. The acts of THE CITY and FONG have taken a great toll on
27 Plaintiffs, including loss of friendships, alienation from family members, and
28

1 straining marriages, not to mention plaintiffs' personal feelings of fear, shame, and
2 anger.

3
4 **FIRST CAUSE OF ACTION AGAINST**
5 **DEFENDANTS CITY, FONG, AND DOES 1-50**
6 **RETALIATION**
7 **Cal. Govt. Code §12940**
8

9 20. Plaintiffs incorporate by reference the factual allegations of paragraphs 1 through
10 19 above.

11 21. Plaintiffs are informed and believe and thereon allege that defendants THE CITY
12 and FONG engaged in retaliatory conduct in violation of public policy against
13 Plaintiffs for opposing unlawful practices under FEHA.

14 22. Plaintiffs are informed and believe and thereon allege that THE CITY through its
15 agent and employee FONG retaliated against Plaintiffs in violation of California
16 Government Code § 12940.

17 23. Defendants did so by materially changing the employment conditions of Plaintiffs
18 after they filed Notices of Tort Claims for their race discrimination claims related
19 to their suspensions, which were the basis of the *Harmston* litigation.

20 24. Plaintiffs are informed and believe and thereon allege that after, Plaintiffs
21 participated in the deposition of Heather Fong in the *Harmston* litigation,
22 Plaintiffs were given different, odd-hour, schedules, in violation of their contracts.
23 Plaintiffs' new positions were regarded as highly undesirable, and their new hours
24 restricted Plaintiffs' ability to provide childcare.

25 25. Plaintiff is informed and believes and thereon alleges that in addition to the
26 enumerated adverse actions above, defendants, and each of them, have engaged in
27 other unlawful practices against Plaintiffs which are not yet fully known. When
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1 said practices become known to Plaintiffs, they will seek leave to amend this
2 complaint in those regards.

3 26. As a direct and proximate result of defendants' willful, knowing, and intentional
4 acts, and defendants' failure to act, Plaintiff have suffered and will continue to
5 suffer mental distress, anguish, and indignation. Plaintiffs are thereby entitled to
6 general and compensatory damages in an amount to be proven at trial.

7 27. Defendants' acts alleged herein are malicious, oppressive, despicable, and in
8 conscious disregard of Plaintiffs rights. As such, punitive damages are warranted
9 against defendants in order to punish and make an example of them.

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11
12 **SECOND CAUSE OF ACTION AGAINST**
13 **DEFENDANTS CITY AND DOES 1-50**

14 **RETALIATION**

15 **42 U.S.C. 2000(e) et. seq. (Title VII of the Civil Rights Act of 1964)**

16
17 28. Plaintiffs incorporate by reference the factual allegations of paragraphs 1 through
18 27 above.

19 29. Plaintiffs are informed and believe and thereon allege that defendants THE CITY
20 and engaged in retaliatory conduct in violation of public policy against Plaintiffs
21 for opposing unlawful practices in the *Harmston* litigation.

22 30. Plaintiffs are informed and believe and thereon allege that THE CITY through its
23 agent and employee FONG retaliated against Plaintiffs in violation of 42 U.S.C.
24 2000(e) et. seq. (Title VII of the Civil Rights Act of 1964).

25 31. Defendants did so by materially changing the employment conditions of Plaintiffs
26 after they filed Notices of Tort Claims and a Complaint in the *Harmston* litigation
27 for their race discrimination claims related to their suspensions.
28

1 32. Plaintiff is informed and believes and thereon alleges that in addition to the
2 enumerated adverse actions above, defendants, and each of them, have engaged in
3 other unlawful practices against Plaintiffs which are not yet fully known. When
4 said practices become known to Plaintiffs, they will seek leave to amend this
5 complaint in those regards.

6 33. As a direct and proximate result of defendants' willful, knowing, and intentional
7 acts, and defendants' failure to act, Plaintiffs have suffered and will continue to
8 suffer mental distress, anguish, and indignation. Plaintiffs are thereby entitled to
9 general and compensatory damages in an amount to be proven at trial.

10 34. Defendants' acts alleged herein are malicious, oppressive, despicable, and in
11 conscious disregard of Plaintiff's rights. As such, punitive damages are warranted
12 against defendants in order to punish and make an example of them.

13 **THIRD CAUSE OF ACTION AGAINST**
14 **DEFENDANTS CITY, FONG AND DOES 1- 50**
15 **INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**
16

17 35. Plaintiffs incorporate by reference the factual allegations of paragraphs 1 through
18 34 above.

19 36. Plaintiffs are informed and believe and thereon allege that THE CITY by and
20 through its agents, employees and defendants FONG and DOES 1-50 acted
21 without regard to the health and safety of Plaintiffs, and each of them treated
22 Plaintiffs in the deplorable manner alleged herein.

23 37. Plaintiffs are informed and believe and thereon allege that defendants, standing in
24 a position of authority over Plaintiffs, deliberately acted without regard to
25 Plaintiffs' health, safety, or well-being, causing them severe emotional and
26 physical distress.

27 38. Plaintiffs are informed and believe and thereon allege that as a proximate result of
28 defendants' extreme and outrageous acts, Plaintiffs suffered severe emotional

1 distress in the form of humiliation, embarrassment, mental-anguish, anxiety, stress
 2 and indignation. Defendants acted with the willful knowledge that Plaintiffs
 3 would suffer severe harm as a result.

4 39. Plaintiffs are informed and believe and thereon allege that defendants' acts alleged
 5 herein are malicious, oppressive, despicable, and in conscious disregard of
 6 Plaintiffs' rights. As such, punitive damages are warranted against defendants in
 7 order to punish them and make an example of their actions.


8 **PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFFS pray for relief as follows:

- 10 1. For general damages in excess of the jurisdictional limit of this court;
- 11 2. For special damages in amounts according to proof;
- 12 3. For punitive damages in amounts according to proof;
- 13 4. For attorneys' fees as provided by law;
- 14 5. For a mandatory injunction requiring defendants to reinstate Plaintiffs to their
 15 previous positions without record of the adverse employment actions taken by
 16 defendants, pursuant to *Government Code* §12970(a);
- 17 6. For interest as provided by law;
- 18 7. For costs of suit incurred herein; and
- 19 8. For such other and further relief as the Court deems fair and just.

20 Dated: December 7, 2007

LAW OFFICES OF WAUKEEN Q. McCOY

21 By 
 22 WAUKEEN Q. McCOY
 23 Attorney for Plaintiffs
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